

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ALICE DURHAM, *Individually and as
Administratrix of the Estate of Lyle E. Durham,*

Plaintiff and Third-Party Defendant,

vs.

5:05-CV-1404
(NAM/GHL)

ESTATE OF PERRY MITCHELL; FEDEX FREIGHT
EAST, INC;

Defendants, Counter-Defendants and Third-Party Plaintiffs.

vs.

ANTHONY DeMARCO & SONS,

Third-Party Defendant and Counter-Claimant

Hon. Norman A. Mordue, Chief U.S. District Judge

JUDGMENT DISMISSING ACTION BY REASON OF SETTLEMENT

Pursuant to the Letter Motion /Notice of settlement (Dkt. No. 33) filed by James Wescoe, that the parties have entered into an agreement in settlement of all claims in this action, and that they reasonably anticipate finalizing their agreement shortly, following which this action will be discontinued, with prejudice, by stipulation pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure. Based upon this development, I find that it is not necessary for this action to remain on the court's active docket.

It is therefore hereby

ORDERED that:

1. The Court grants the letter motion for the case to be removed from the trial calendar. The above-captioned case is hereby **DISMISSED** in its entirety **without prejudice** to

re-opening upon the motion of any party within thirty (30) days of the date of the filing of this order upon a showing that the settlement was not consummated;

2. The dismissal of the above-captioned case shall become **with prejudice** on the thirty-first day after the date of the filing of this order unless any party moves to re-open this case within thirty (30) days of the date of the filing of this order upon a showing that the settlement was not consummated; and

3. The Clerk shall forthwith serve this Judgment upon the attorneys for the parties appearing in this action by electronic mail.

IT IS SO ORDERED.

DATED: August 7, 2008
Syracuse, New York


Norman A. Mordue
Chief United States District Court Judge